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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 23/2014*, **

Communication submitted by:	Y (represented by counsel who has requested anonymity)
Alleged victim:	The author
State party:	United Republic of Tanzania
Date of communication:	23 June 2014 (initial submission)
Document references:	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 24 July 2014 (not issued in document form)
Date of adoption of Views:	31 August 2018
Subject matters:	Torture, inhuman and degrading treatment; discrimination against a person with albinism
Procedural issues:	Admissibility — exhaustion of domestic remedies; competence *ratione materiae*
Substantive issues:	Albinism; discrimination based on disability; torture, inhuman and degrading treatment; violation of the right to respect for intellectual and mental integrity
Articles of the Convention:	1, 4, 5, 7, 8, 14, 15, 16, 17 and 24
Article of the Optional Protocol:	2

1.1 The author of the communication is Y, a national of the United Republic of Tanzania with albinism born in 1999. He is represented by A.P.[1] The author claims to be a victim of violations by the State party of his rights under articles 4, 5, 7, 8, 14, 15, 16, 17 and 24 of the Convention. The United Republic of Tanzania ratified the Optional Protocol to the Convention on 10 November 2009.

1.2 On 23 September 2014, the State party submitted its observations on the admissibility of the present communication, requesting that the admissibility and the merits

* Adopted by the Committee at its twentieth session (27 August–21 September 2018).

** The following members of the Committee participated in the examination of the communication: Ahmad Al-Saif, Monthian Buntan, Imed Eddine Chaker, Theresia Degener, Jun Ishikawa, Samuel Njuguna Kabue, Hyung Shik Kim, Stig Langvad, Robert George Martin, Martin Babu Mwesigwa, Coomaravel Pyaneandee, Jonas Ruskus, Damjan Tatić and Liang You.

[1] Both the author and his counsel have requested anonymity.

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be considered separately. The State party's request for a split of the admissibility and the merits was denied on 12 May 2015.

A. Summary of the information and arguments submitted by the parties

The facts as submitted by the author

2.1 The author was born in 1999. He is from Nyaruguguna, a village in the Geita Region of the United Republic of Tanzania. He and his brother are persons with albinism. As a consequence, their family neglected and abandoned them. Since then, a local non-governmental organization (NGO), Under the Same Sun,[2] has been taking care of them.

2.2 In 2008, due to the escalation in the killings and violence committed against persons with albinism, the author and his brother feared being killed. Therefore, they stopped attending Nyangw'hale Primary School, which was miles away from their home and required them to make a long a trek through thick bushes, during which they could easily be attacked.

2.3 On an unspecified date in 2010, when the author was only 11 years old, a neighbour forcibly shaved the author's hair. The State party failed to investigate the matter and the neighbour was never prosecuted.[3]

2.4 On 14 October 2011, when the author was 12, he was attacked in Geita Region by a man with a machete, who stole three of the fingers of his right hand. The attacker also hacked the author's left shoulder with the machete, leaving him unable to use his right hand and left arm. The author escaped from his attacker by biting his genitals. He was left wounded in front of his home. The State party did not provide him with any medical aid or rehabilitation. Later, in 2012, Under the Same Sun brought the author back to school. However, after two years without access to formal education, the author has faced great difficulties and is still unable to read or write properly.

2.5 The State party initiated an investigation into the crime suffered by the author. On 15 October 2011, based on testimony by the author and some of his neighbours, three people were detained and taken to court: R.T., the author's biological father; A.M., his stepmother; and M.A., his uncle. On 16 October 2011, they appeared before a magistrate's court in Geita for the attempted murder of the author and for acts of violence.

2.6 In June 2012, the Director of Public Prosecutions dropped the charges against R.T., A.M. and M.A. for lack of evidence. The State prosecutor told the court that more time was needed to finalize the investigation, but nothing has been done to that end. The author has waited two years before submitting his communication to the Committee, without any prospect of redress from the domestic authorities. In this connection, the author notes that only 5 of the 72 murders of persons with albinism documented since the year 2000 in the United Republic of Tanzania have resulted in successful prosecutions.[4] In the great majority of cases, the State party's authorities have failed to investigate and prosecute the perpetrators due to an alleged lack of evidence, thereby maintaining impunity and encouraging the perpetuation of persecution, discrimination and killings of persons with albinism.[5]

2.7 According to statistics provided by the author, the number of persons with albinism in the United Republic of Tanzania is estimated to be more than 200,000.[6] He claims that

[2] Under The Same Sun is a charitable organization registered in Canada and in the United States of America, founded in 2008 by Peter Ash. Its goal is to promote the well-being of persons with albinism through advocacy and education. Its website is www.underthesamesun.com.

[3] The author does not provide further information on this matter.

[4] The author does not provide details on the circumstances of the five successful prosecutions.

[5] The Under the Same Sun organization issued an updated report in January 2014 on attacks against persons with albinism, entitled "PWA attacks and legal action". As at January 2014, only 11 similar cases out of the 139 reported had resulted in convictions by courts in the State party.

[6] The United Republic of Tanzania has one of the highest rates of albinism in the world, estimated at 1 in 1,429 people. See "Albinos in Africa: a population at risk", available at

persons with albinism suffer from different forms of persecution and discrimination, many of which are grounded in deep-rooted myths.[7]

2.8 The author submits that he was attacked because of the belief that the body parts of a person with albinism provide wealth and prosperity. This belief is widespread in the United Republic of Tanzania and has resulted in an increase in persecution of persons with albinism to feed a black market that circulates body parts of such persons. Children are increasingly being targeted, since it is believed that they have innocent souls and that their body parts have stronger magical power to bring wealth.[8] Among the attacks reported in 2011 and 2012, seven involved children, the youngest being seven months old. The author submits that the life and physical integrity of persons with albinism are permanently at risk in the United Republic of Tanzania.[9]

The complaint

3.1 The author alleges that the State party violated his rights under articles 4, 5, 7, 8, 14, 15, 16, 17 and 24 of the Convention. He claims that the State party has failed to provide him with the protection he has needed as a child with albinism, and has therefore put him at a permanent risk of being attacked. These practices are known by the State party, but it does not take any action to protect children and young persons with albinism who are in a situation of very high vulnerability. The author therefore argues that the lack of intervention of the State party in the case of the author amounts to a violation of article 4 of the Convention.

3.2 The author also claims that the State party has not taken reasonable steps to ensure that persons with albinism are not discriminated against on the basis of their impairment. He submits that, as a child with albinism living in the United Republic of Tanzania, he has suffered humiliations, insults and marginalization. The failure of the State party to investigate effectively his case and similar cases, and to prosecute the perpetrators, constitutes a violation of his rights to equality and non-discrimination, in violation of article 5 (2) and (3) of the Convention.

3.3 The author argues that the State party has failed to provide a safe and secure environment, as it has not ensured that persons with albinism are protected from attacks, violence, threats and any other forms of intimidation. The State party has left persons with albinism to the mercy of anyone who wants to hunt their body parts. In his case, as a child with albinism, the author submits that the State party has failed to fulfil its obligations to provide security for and protect the human dignity of children with disabilities, thereby violating his rights under article 7 of the Convention.

3.4 The author submits that the State party has not taken appropriate measures to raise awareness throughout society in regard to persons with albinism. Furthermore, the State party failed to provide the author with any form of medical assistance or rehabilitation. He therefore considers that the State party violated his rights under article 8 of the Convention.

3.5 The author argues that the permanent risk he is facing, and against which the State party has not taken any measure, has obliged him to stop attending school and has therefore prevented him from enjoying his right to education. He considers that the lack of protection by the State party's authorities amounts to a violation of his rights under article 24 (1) of the Convention.

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www.stiefel.com/content/dam/stiefel/globals/images/products/HatsOnSkinHealth/Hats_On_For_Skin_Health_Fact_Sheet.pdf.

[7] The author attaches to his communication a list of the most common myths associated with albinism in the United Republic of Tanzania, which include such beliefs as: (a) albinism is a curse from God; (b) persons with albinism are ghosts and thus never die; (c) having sex with an albino woman can cure AIDS; (d) body parts of a person with albinism can be magically used to generate wealth; (e) persons with albinism only come from Africa; and (f) the birth of a child with albinism is attributable to the mother.

[8] Ibid.

[9] The author submits that the situation of persons with albinism in the United Republic of Tanzania was highlighted as a matter of concern in the thirty-fourth activity report submitted to the African Union Assembly of Heads of State and Government.

3.6 He also argues that the failure by the State party to take the necessary steps to bring the perpetrators of the attacks he suffered in 2010 and 2011 to justice has violated his right to access to justice and protection. He therefore considers that the State party has violated his rights under article 13 of the Convention.

3.7 Furthermore, the author considers that the State party has failed to protect him from violence and torture. Even if they know of the persecution suffered by persons with albinism in the United Republic of Tanzania, the State party's authorities have not taken appropriate measures to curtail the targeted physical, emotional and mental abuses that they suffer. This situation persists even though the Human Rights Council[10] urged States parties in 2013 to take all measures necessary to ensure the effective protection of persons with albinism and their family members. The author considers the attacks he suffered to be a direct consequence of the lack of intervention by the State party's authorities on the issue, which, together with their failure to investigate the attacks he suffered, amount to a violation of articles 15 and 16 of the Convention.

3.8 He also alleges that, as a result, his physical and mental integrity have not been respected, and that the authorities of the State party have therefore violated their obligations under article 17 of the Convention.

3.9 As regards the fact that he was forced to stop attending school in order to escape violence and insecurity, the author claims that he did not enjoy his right to education for two years until the Under the Same Sun organization took care of him. Therefore, the author alleges that his rights under article 24 (1) of the Convention have been violated by the State party.

3.10 The author argues that significant efforts have been made to exhaust all available domestic remedies. However, the State party has failed to conduct effective investigations into the attacks he suffered in 2010 and 2011 and which he reported to the police. He recalls that in June 2012 the Director of Public Prosecutions decided to drop the charges against the three suspects for lack of evidence. The author also states that the Criminal Procedure Act[11] provides that a victim is unable to initiate a private prosecution before a district court, a magistrates' court or the High Court.

3.11 The author submits that his complaint has not been submitted to or examined under any other procedure of international investigation.

State party's observations on admissibility

4.1 On 23 September 2014, the State party submitted its observations on the admissibility of the present communication, requesting that the admissibility and the merits be considered separately. The State party recalls the main facts of the complaint and acknowledges that the author was attacked on 14 October 2011 in Geita Region because of his skin pigmentation.

4.2 The State party submits that the communication should be held inadmissible for non-exhaustion of all available domestic remedies, in compliance with article 2 (d) of the Optional Protocol to the Convention. The State party challenges the author's allegation that it failed to conduct effective investigations and submits that an investigation was instituted by the police right after the attack, namely on 14 October 2011. It recalls that on 15 October 2011, three suspects were arrested and arraigned in Geita Magistrates' Court for attempted murder in criminal case No. 43/2011.

4.3 However, the State party submits that the accused persons, three members of the author's family, were not identified by the author as being his attackers. Since there was no other evidence connecting the arrested suspects to the said attack, the prosecution dropped the charges by way of nolle prosequi in accordance with the Criminal Procedure Act.[12] In accordance with domestic law, the case can later be reinstated.

[10] The author refers to Human Rights Council resolution 23/13.

[11] See www.imolin.org/doc/amlid/Tanzania_The%20Criminal%20Procedure%20Act,%201985.pdf.

[12] The State party refers to sect. 91 (1) of the Criminal Procedure Act.

4.4 The State party refutes the author's allegations about its failure to take action. It submits that the investigation into the attack against the author is ongoing and that efforts are being made to locate and arrest the assailants and bring them to justice. It considers that the communication is based on an erroneous belief that the State party has failed to act.

4.5 As regards the author's argument that he has been unable to pursue and initiate a private prosecution as this is not provided for by Tanzanian criminal law, the State party submits that such a possibility exists under section 99 of the Criminal Procedure Act, and that there is no evidence that the author attempted to initiate this procedure and failed.

4.6 The State party further submits that the Basic Rights and Duties Enforcement Act provides for a procedure for the enforcement of constitutional rights. It notes that the author failed to exhaust this remedy, which provides for redress when the basic rights of an individual have been violated by the State party's failure to investigate a complaint effectively.

4.7 The State party submits that domestic courts still have not adopted a final decision on the author's case. It therefore reiterates that the author's communication should be held inadmissible for non-exhaustion of all available domestic remedies in regard to the complaints that he has brought before the Committee.

Author's comments on the State party's observations on admissibility

5.1 On 11 May 2015, the author transmitted his comments on the State party's observations on admissibility. He submits that the exhaustion of domestic remedies rule should never be used as a protective shield by States that have not established a suitable environment for promoting, protecting and preserving the rights of its individuals.

5.2 In that connection, the author refers to the jurisprudence of the African Commission on Human and Peoples' Rights,[13] according to which three major criteria can be deduced from the practice of the Commission in determining the exhaustion of local remedies rule, namely that the remedy must be available, effective and sufficient. The Commission also states that a remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found to be sufficient if it is capable of redressing the complaint. The author also refers to the jurisprudence of the European Court of Human Rights,[14] according to which applicants are only required to exhaust domestic remedies which are available in theory and in practice at the relevant time and which they can directly institute themselves, which means that the remedies must be accessible, capable of providing redress in respect of their complaints, and offering reasonable prospects of success. Where domestic remedies are non-existent, or unduly and unreasonably prolonged, or unlikely to bring effective relief, a resort to international measures is required. The author considers that this is the case for the acts of murder and attacks to persons with albinism, which are systemic and continuous in the State party, amounting to a grave violation of their rights that remains unpunished.

5.3 As to the State party's submission that three suspects were arrested on 15 October 2011, the author emphasizes that, following the withdrawal of the matter by the prosecutor for an alleged lack of evidence to incriminate the culprits, the State party did not take any further action to investigate the author's case. The author therefore considers that the State

[13] *Jawara v. Gambia* (communication No. 147/95-149/96), paras. 31–32.

[14] *Sejdovic v. Italy*, Grand Chamber (application No. 56581/00), judgment of 1 March 2006, para. 31: "The Convention allows the Contracting States considerable discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of article 6, while at the same time preserving their effectiveness. The Court's task, however, is to determine whether the result called for by the Convention has been achieved. In particular, the resources available under domestic law must be shown to be effective ..."; and para. 37: "The Court observes, however, that in its decision on the admissibility of the application it dismissed an objection by the Government that domestic remedies had not been exhausted, finding that the remedy in question would have had little chance of success and that the applicant would have encountered objective difficulties in using it. The Court sees no reason to revise that conclusion."

party violated its obligations under domestic law[15] and under the Convention to carry out an effective investigation and prosecute the perpetrators.

5.4 The author also refers to the jurisprudence of the Inter-American Commission of Human Rights in *Greco v. Argentina*, where it stated that: "While it is the responsibility of the petitioner in a given instance to ensure that the State is placed on proper notice of an alleged violation of the Convention, so as to have an adequate opportunity to resolve the complaint within its own legal system, it is the State that is obliged to advance the investigation of any crime which may be prosecuted *de officio*. In such cases, it can only be demanded that the petitioner exhaust domestic remedies where the State concerned investigates the facts alleged with due diligence and proceeds to punish any persons found responsible in accordance with its duties under both domestic law and the Convention."[16]

5.5 The author argues that in the case of crimes of public action, and even in those which may be perpetrated by a private actor, it is not valid to request the exhaustion of domestic remedies by the victim because the State party has a duty to maintain public order and to set the criminal law system for effective investigation of these crimes. The author refers to additional jurisprudence of the Inter-American Commission on Human Rights[17] according to which the obligation to investigate "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. In other words, the obligation to investigate, prosecute and punish the persons liable for human rights violations is a non-delegable duty of the State." The author submits that, in his case, the State party has failed to conduct an effective investigation and prosecution. Rather, it discontinued the investigation before identifying the perpetrators, as domestic jurisdictions usually do in similar cases.

5.6 As regards the State party's statement that investigations are ongoing to bring the author's attackers to justice, the author submits that there is no sign of any concrete action taken, or of any result of the investigative process referred to. The author has never been contacted and he has never received any information about the procedures and investigations allegedly being carried out.

5.7 Regarding the State party's argument that the author should have submitted a human rights petition before Tanzanian courts under the Basic Rights and Duties Enforcement Act, the author submits that such procedure is cumbersome and extremely prolonged. He refers to the jurisprudence of human rights bodies, according to which there is no need to exhaust unduly prolonged remedies which by their very nature are ineffective.[18] He submits that even if no hard and fast rule exists to establish whether remedies are unduly prolonged, human rights bodies usually consider the conduct of the State concerned and the complexity of the case to determine whether the length of time is reasonable.[19] The author submits that applicants can rely on this rule when, as in his case, investigations have been pending for years without any evidence of progress or when judicial proceedings have dragged on for years, or when remedies have been used as "delaying instruments".[20]

5.8 The author also refers to the petition submitted on 20 March 2009 to the High Court of Tanzania by persons with albinism who have been victims of acts of violence, as "Miscellaneous Civil Application No. 15 of 2009", under the Basic Rights and Duties Enforcement Act. According to section 4 of the Act, an aggrieved person can apply to the High Court for remedies, and the bench in charge of determining the merits of the

[15] The author refers to sect. 90 (1) of the Criminal Procedure Act.

[16] See Inter-American Commission on Human Rights report No. 72/01, case 11.804, para. 51.

[17] The author refers to *Sequeira Mangas v. Nicaragua*, Inter-American Commission on Human Rights report No. 52/97, case 11.218, para. 96.

[18] The author refers to *Vicente et al. v. Colombia* (CCPR/C/60/D/612/1995), and to the African Commission on Human and Peoples' Rights, *Association of Victims of Post-Electoral Violence and INTERIGHTS v. Cameroon* (communication No. 272/03), judgment of 25 November 2009.

[19] The author refers to the European Court of Human Rights, *Todorov v. Bulgaria* (application No. 39832/98), judgment of 18 January 2005, para. 45.

[20] The author refers to the Inter-American Court of Human Rights, *"Las Dos Erres" Massacre v. Guatemala* (preliminary objection, merits, reparations and costs), judgment of 24 November 2009.

application is composed of three judges. The constitutional petition was submitted with the support of the Legal and Human Rights Centre, the Tanzania Albino Society and the Tanzania Federation of Disabled People's Organizations, and more than six years later the matter has still not been heard. The author argues that this procedure usually leads to undue delay, because the limited number of judges in many regional branches of the High Court complicates the bringing together of judges to form the bench. The matter has therefore been unduly delayed and prolonged,[21] and the High court could therefore not be considered as an available domestic remedy for the author.

5.9 The author reiterates that since the year 2000 there has been an increase in the number and scale of attacks on persons with albinism in the United Republic of Tanzania, many of which remain unreported. He also submits that the State party has been unable to prosecute the cases reported by the Office of the United Nations High Commissioner for Human Rights so far,[22] and that the judicial system in the United Republic of Tanzania is ill-equipped to handle the high number of cases related to persons with albinism.[23] The author refers to the jurisprudence of the African Commission on Human and Peoples' Rights, according to which in the case of "massive" and "serious" violations of human rights, a State is aware of such violations and it is expected to take appropriate actions to prevent them.[24] The author submits that, regarding the present case, the State was notified of the grave violations of human rights he had suffered, but it failed to take the necessary steps to investigate the case, prosecute and punish the perpetrators, and prevent further similar acts of violence against persons with albinism in the United Republic of Tanzania.

5.10 The author submits that a remedy is considered available only if it is accessible in theory and in practice[25] and can be pursued without any impediment.[26] Domestic remedies are also said to be effective when they offer some prospects of success, such as redress for the alleged violations. In cases of serious violations, such as violations of the right to life, or torture, purely administrative or disciplinary proceedings cannot be claimed to be sufficient or effective.[27] Remedies must then be of a judicial nature, and States should be able to establish the criminal responsibilities of the culprits. The author also refers to the jurisprudence of the European Court of Human Rights according to which applicants do not need to exhaust domestic remedies "where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective".[28]

5.11 The author therefore considers that, in the particular circumstances of his case, the local remedies to redress the violation in the State party are unavailable, and even if considered available, they are undeniably ineffective and insufficient.[29] He therefore requests the Committee to examine the case on the merits, reiterating that the acts that he has been a victim of, and the fact that those acts have not been investigated, which has resulted in non-prosecution of those responsible and left them in total impunity, amount to a violation of his rights under articles 4, 5, 7, 8, 14, 15, 16, 17 and 24 of the Convention.

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[21] *Association of Victims of Post-Electoral Violence and INTERIGHTS v. Cameroon*, para. 63.

[22] The author refers to A/HRC/28/75.

[23] The author refers to cases that had been reported by 2014 only, at the time of his submission to the Committee. He refers to the example of a 1-year-old albino boy who was abducted from his home in the north-west of the country in January 2015 and was found murdered with his arms and legs hacked off. The victim, Yohana Bahati, was kidnapped from his family home in Geita Region by an armed gang. His mother, Esther, was struck with a machete as she tried to protect him.

[24] See African Commission on Human and Peoples' Rights, *World Organisation Against Torture et al. v. Zaire* (mass violation case), communication Nos. 25/89, 47/90, 56/91 and 100/93.

[25] See European Court of Human Rights, *Akdivar and others v. Turkey* (application No. 21893/93), judgment of 16 September 1996, para. 66.

[26] *Jawara v. Gambia*, para. 32.

[27] *Vicente et al. v. Colombia*, para. 5.2.

[28] *Akdivar and others v. Turkey*, para. 67.

[29] See European Court of Human Rights, *D.H. and others v. Czech Republic* (application No. 57325/00), judgment of 13 November 2007, paras. 116–122.

Lack of reply from the State party on the merits of the communication

6. On 12 May 2015, 27 November 2015, 4 March 2016 and 9 May 2016, the State party was requested to submit its observations on the merits of the communication. The Committee notes and regrets that this information has not been received. In the absence of the State party's comments on the merits, the Committee must give due weight to those of the authors' allegations that have been properly substantiated.[30]

B. Committee's consideration of the admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of the Committee's rules of procedure, whether the case is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee and nor has it been or is it being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's submission that the communication should be found inadmissible under article 2 (d) of the Optional Protocol on the grounds of failure to exhaust domestic remedies. In particular, the State party noted that the author had not submitted his case to the courts of the United Republic of Tanzania under the Basic Rights and Duties Enforcement Act. The State party also noted that the author could have initiated a private prosecution under domestic criminal law. In this regard, the Committee notes the author's submission that filing a petition before Tanzanian courts under the Basic Rights and Duties Enforcement Act, as well as initiating and pursuing private prosecutions against the attackers, did not constitute effective remedies in his case. The Committee also notes that the author submitted that the police were informed of the attack on the day it was perpetrated, namely 14 October 2011, that the next day three members of the author's family were arrested and consequently arraigned to court as suspects of the attack, that the prosecution was withdrawn under section 98 of the Criminal Procedure Act for lack of evidence, and that since then the author has never been informed of any new additional steps taken by the authorities of the State party to investigate the case and bring the culprits to justice. In this context, the Committee recalls that the effectiveness of a remedy depends on the nature and the particular seriousness of the alleged violation.[31] The Committee observes that under Tanzanian criminal procedure, the magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, including the victim.[32] However, in cases of violations of such gravity as those of which the author has been a victim, the primary responsibility to prosecute remains in the hands of the State party's authorities,[33] which have a non-delegable duty and obligation to investigate, prosecute and punish.[34]

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[30] See, inter alia, *El Hassy v. Libyan Arab Jamahuriya* (CCPR/C/91/D/1422/2005), para. 4; *El Alwani v. Libyan Arab Jamahuriya* (CCPR/C/90/D/1295/2004), para. 4; *Yrusta and del Valle Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 10.1; and *X v. United Republic of Tanzania* (CRPD/C/18/D/22/2014), para. 6.

[31] *Vicente et al. v. Columbia* (CCPR/C/60/D/612/1995), para. 5.2.

[32] See sect. 99 (1) of the Criminal Procedure Act: "Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorized by the President in this behalf shall be entitled to conduct the prosecution without such permission."

[33] See sect. 90 of the Criminal Procedure Act, according to which a director of public prosecutions has the duty (a) to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed, (b) to take over and continue any criminal proceedings that have been instituted or undertaken by any other person or authority, and (c) to discontinue any criminal proceedings instituted or undertaken by him or any other authority or person. Under sect. 59B (2) of the Constitution of the United Republic of Tanzania of 1977, the director of public prosecutions has the power to institute, prosecute and supervise all criminal prosecutions in the country. See also the National Prosecutions Service Act, 2008.

[34] See, for example, *Greco v. Argentina*, para. 51; and *Sequeira Mangas v. Nicaragua*

7.4 The Committee also notes that on 20 March 2009, other victims of similar violent acts brought their case to the Constitutional Court of the United Republic of Tanzania under the Basic Rights and Duties Enforcement Act, and that at the time of the examination of the present complaint, more than nine years later, the matter has still not been heard. In this connection, the Committee notes the difficulties faced by the High Court in composing the bench of three judges that must decide on the merits of each application submitted under the Basic Rights and Duties Enforcement Act. In such circumstances, the Committee does not find it reasonable to require that the author should have gone to court to initiate additional proceedings of an unpredictable duration, such as civil proceedings or additional proceedings before the High Court under the Basic Rights and Duties Enforcement Act.[35]

7.5 The Committee recalls that, under article 1 of the Convention, persons with disabilities include, but are not limited to, those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. The Committee also recalls that: "Albinism is a relatively rare, non-contagious, genetically inherited condition that affects people worldwide regardless of ethnicity or gender. It results from a significant deficit in the production of melanin and is characterized by the partial or complete absence of pigment in the skin, hair and eyes … The most common and visible type is oculocutaneous albinism, which affects the skin, hair and eyes … Lack of melanin in the eyes results in high sensitivity to bright light and significant vision impairment, with the level of severity varying from one person to another. This vision impairment often cannot be completely corrected. In addition, one of the most serious health implications of albinism is vulnerability to skin cancer, which remains a life-threatening condition for most persons with albinism."[36] A human rights-based model of disability requires the diversity of persons with disabilities to be taken into account (preamble to the Convention, para. (i)) together with the interaction between individuals with impairments and attitudinal and environmental barriers (preamble to the Convention, para. (e)).[37] In view thereof and noting that the State party does not question the competence *ratione materiae* of the Committee to address the author's complaint, the Committee considers it necessary to reiterate that albinism falls within the definition of disability as enshrined in article 1 of the Convention.[38]

7.6 As regards the author's claim under article 4 of the Convention, the Committee recalls that, in view of its general character, this article does not in principle give rise to free-standing claims, and can only be invoked in conjunction with other substantive rights guaranteed under the Convention.[39] The Committee therefore considers that the author's claim under article 4 read alone is inadmissible under article 2 (e) of the Optional Protocol.

7.7 As regards the author's claims under article 14 of the Convention, the Committee notes the author's argument that the State party failed to take appropriate and adequate measures to raise awareness throughout society, which led to discrimination and insecurity for persons with albinism, and that the State party has taken no initiative to end this situation. However, the Committee also notes that these allegations are submitted in general terms, and that the author was never deprived of his liberty in the sense of article 14 which relates to any form of detention or institutionalization of persons with disability.[40] The Committee therefore considers that this part of the complaint is inadmissible for lack of substantiation, under article 2 (e) of the Optional Protocol.

7.8 There being no other obstacles to admissibility, the Committee declares the communication admissible and proceeds to its examination on the merits.

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[35] *A v. United Republic of Tanzania*, para. 7.4.

[36] A/HRC/34/59, paras. 15–16.

[37] *S.C. v. Brazil* (CRPD/C/12/D/10/2013), para. 6.3.

[38] *A v. United Republic of Tanzania*, para. 7.6.

[39] *H.M. v. Sweden* (CRPD/C/7/D/3/2011), para. 7.3, and *Lockrey v. Australia* (CRPD/C/15/D/13/2013), para. 7.5.

[40] See the guidelines on art. 14 of the Convention, "The right to liberty and security of persons with disabilities", September 2015.

C. Committee's consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of the Committee's rules of procedure. Since the State party has not submitted any observations on the merits of the communication, due weight must be given to the author's claims insofar as they have been substantiated.[41]

8.2 As regards the author's complaint under article 5 of the Convention, the Committee notes his argument that he has been discriminated against on the basis of his disability, because the kind of violence he has suffered is a generalized practice in the State party, which only affects persons with albinism. The Committee also notes the author's submission that he has been a victim of disability-based discrimination also as a result of the impunity with which the violent acts he has suffered has been treated to date. In this connection, the author submits that impunity characterizes most cases of violence perpetrated against persons with albinism, as the State party's authorities consider that persons with albinism are linked to witchcraft and that witchcraft is a cultural practice that is generally accepted and with regard to which many prejudices still prevail in society. Finally, the Committee notes that the State party's authorities have not taken the necessary measures to ensure an effective, complete and impartial investigation and prosecution of the perpetrators, and that no preventive or protective measures have been implemented in that regard.

8.3 The Committee recalls that under article 5 (1)–(3) of the Convention, States parties must ensure that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law, and must take all appropriate steps to ensure that reasonable accommodation is provided in order to promote equality and eliminate discrimination. In the present case, the Committee notes that the author was the victim of a violent crime that matches the characteristics of a practice exclusively affecting persons with albinism: on 14 October 2011, when he was 12 years old, he was attacked by a man with a machete who stole three of the fingers of his right hand. Also, his left shoulder was hacked with the machete, preventing him from using both his right hand and left arm. Since then, the author's access to justice has been significantly limited: no investigative action seems to have been taken by the competent authorities after the withdrawal of the first prosecution, and his case still meets with total impunity more than six years after the criminal attack that he suffered.

8.4 The Committee considers that the State party cannot avoid its responsibilities under the Convention for the mere fact that some of its authorities, such as Geita Magistrates' Court, have already dealt with or are still dealing with the matter, while it is clear that the remedies pending in the State party have been unduly prolonged and would appear to be ineffective.[42] It also considers that the State party's failure to prevent and punish such acts has resulted in a situation that puts the author and other persons with albinism in a situation of particular vulnerability and prevents them from living in society on an equal basis with others. In the absence of any explanation from the State party on these issues, the Committee considers that the author has been a victim of a form of violence that exclusively targets persons with albinism. The Committee therefore concludes that the author has been a victim of a direct discrimination based on his disability, in violation of article 5 of the Convention.

8.5 The Committee notes the author's claim that the State party has failed to pay adequate attention to his particular vulnerability as a child with albinism, while children and young persons with albinism are frequently subjected to acts of cruelty and torture in the State party, that the author had to stop going to school for fear of being persecuted, and that he suffered attacks on two occasions. In that connection, the Committee recalls that, under article 7 (1) of the Convention, States parties must take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with others. The Committee observes that by failing to provide

[41] *Yrusta and del Valle Yrusta v. Argentina*, para. 10.1; and *X v. United Republic of Tanzania*, para. 8.1.

[42] *X v. United Republic of Tanzania*, para. 8.4.

protection to the author — a 12-year-old child — despite the complaint he submitted to the police after the first attack, which he suffered in 2010, and the failure to provide him with the medical assistance and rehabilitation he needed after the second attack, which he suffered because of his disability in 2011, the State party breached its obligations under article 7 of the Convention.

8.6 Regarding the author's claims under article 8 of the Convention, the Committee notes the author's argument that the State party failed to take appropriate and adequate measures to raise awareness throughout society, which led to discrimination and insecurity for persons with albinism, and that the State party has taken no initiative to end this situation. The Committee observes that the State party's inactivity and passivity amounts to an implicit acceptance of the perpetuation of the heinous crimes committed in its jurisdiction against persons with albinism and considers that it amounts to a violation of article 8 of the Convention.

8.7 As regards the author's allegations under article 15 of the Convention, the Committee notes his argument that the acts that he was a victim of amount to torture, violence and abuse which the State party has failed to effectively investigate and punish. The Committee recalls that under article 15 of the Convention, no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and that States parties must take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment. The Committee also recalls that "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[43] The Committee further recalls that the violent acts suffered by the author were perpetrated by private individuals, and that, as such, they do not constitute acts of torture. Nonetheless, the Committee also recalls that the obligation of States parties to prevent and punish torture and inhuman and degrading treatment violations applies to acts committed by both State and non-State actors.[44] Expedition and effectiveness are particularly important in the adjudication of such cases. The Committee also considers that the suffering experienced by the author, owing to the lack of action by the State party to allow effective prosecution of the suspected perpetrators of the crime, becomes a cause of revictimization, and amounts to psychological torture and/or ill-treatment. For these reasons, the Committee finds that, in the circumstances of the present case, the State party has violated article 15 of the Convention.[45]

8.8 The Committee recalls that, under article 16 (4) of the Convention, States parties must "take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services", and that such recovery and reintegration must "take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs". In the absence of any submission from the State party on the author's allegations of violation of article 16, the Committee observes that even though, at the time of the attack, the author was a 12-year-old child who had been abandoned by his family, the State party failed to provide him with any kind of medical care and assistance for his rehabilitation. For these reasons, the Committee finds that, in the circumstances of the present case, the State party has violated the author's rights under article 16 of the Convention.

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[43] See art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[44] See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 13.

[45] See, for example, *Đurić v. Bosnia and Herzegovina* (CCPR/C/111/D/1956/2010), paras. 9.6–9.7; *Yrusta and del Valle Yrusta v. Argentina*, para. 10.8; and *X v. United Republic of Tanzania*, para. 8.6.

8.9 With regard to the author's complaint under article 17 of the Convention, the Committee recalls that under that article, "every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others". It also recalls that "the right to integrity of the person is based on what it means to be a person".[46] It is linked to the idea of human dignity, and that each person's physical and mental space should be protected. It includes the prohibition of physical and mental torture, and of inhuman and degrading treatment and punishment, as well as of a wide range of less serious forms of interference with a person's body and mind. The violent acts suffered by the author clearly fall within the category of acts that result in a violation of physical and mental integrity, since the current practice in the State party consists in hunting persons with albinism to savagely cut off some of their body parts, denying them their physical integrity and their condition as human beings. The Committee also recalls that, under article 4 of the Convention, States parties have the general obligation to take all necessary measures to ensure and promote the full realization of this right. In the present case, the State party did not take any measures to prevent the acts suffered by the author; it failed to prosecute the perpetrators of the acts and did not take any measures to provide the author with rehabilitation or support for his reintegration into society. So far, the crimes committed against the author remain unpunished. The Committee also observes that the author has not been provided with any support from the State party's authorities to enable him to live independently again after the loss of his left arm and right hand and that, generally speaking, the State party has not adopted any measures to prevent this form of violence against persons with albinism and to protect them therefrom.[47] Consequently, the Committee considers that the failure by the State party to take all necessary measures to prevent acts of violence similar to those suffered by the author and to efficiently investigate and punish the perpetrators of these acts in the author's case amounts to a violation of his rights under article 17 read in conjunction with article 4 of the Convention.

8.10 The Committee notes the author's allegations of a violation of article 24 of the Convention for failure by the State party to protect him in a general climate of increasing violence and attacks against persons with albinism, which forced him to stop attending school for two years in order to escape insecurity. It also notes the author's claim that, as a consequence of these two years without education, he has difficulty reading and writing properly. In the absence of any submissions from the State party on this point, the Committee observes that the State party did not provide the author with any assistance and did not adopt any form of reasonable accommodation to enable him to go to school, and that as a result he was deprived of his right to education until a private NGO provided him with the support that he needed. For these reasons, the Committee finds that, in the circumstances of the present case, the State party has violated the author's rights under article 24 (2) (b) and (c) of the Convention.

D. Conclusion and recommendations

9. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5, 7, 8, 15, 16, 17 read alone and in conjunction with article 4, and 24, of the Convention, and therefore makes the following recommendations to the State party:

(a) Concerning the author, the State party is under an obligation:

(i) To provide him with an effective remedy, including compensation, redress for the abuses suffered, and the support that is necessary to enable him to live independently again;

(ii) To conduct an impartial, speedy and effective investigation into the attack suffered by the author, and to prosecute the perpetrators;

(iii) To publish the Committee's Views and circulate them widely in accessible formats so that they are available to all sectors of the population;

[46] *N. v. United Republic of Tanzania*, para. 8.7.

[47] Ibid., para. 8.4.

(b) General measures: The State party is under an obligation to take measures to prevent similar violations in the future. In this regard, the Committee refers to the recommendations of the Independent Expert on the enjoyment of human rights by persons with albinism as contained in her report to the Human Rights Council[48] and requires the State party:

(i) To review and adapt legal frameworks as needed to ensure that they encompass all aspects of attacks against persons with albinism, including with regard to trafficking of body parts;

(ii) To ensure prompt investigation and prosecution of cases of attacks against persons with albinism as well as trafficking of body parts;

(iii) To ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation;

(iv) To develop and implement long-lasting awareness-raising campaigns that are based on the human rights model of disability and are in compliance with State party's obligations under article 8 of the Convention, and training to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism, that also cover the scope of the Convention and its Optional Protocol.

10. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response that includes information on any action taken in light of the present Views and the recommendations of the Committee.

[48] A/HRC/34/59, paras. 97 ff.